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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Tenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 11 May 1994, at 3 p.m.

Chairperson: Mr. ALVAREZ VITA
later: Mrs. VYSOKAJOVA

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1994/SR.16.

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The public meeting was called to order at 3.45 p.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Initial report of Belgium (continued) (E/1990/5/Add.15; E/C.12/1994/WP.1; HRI/CORE/1/Add.1)

1. The CHAIRPERSON invited the delegation of Belgium to reply to the issues raised in connection with trade union rights under article 8 of the Covenant reading:

"12. Has Belgium ratified the ILO Conventions on trade unions?

13. Are there any legal restrictions on trade union activities in Belgium and, if so, are they consistent with article 8, paragraph 2, of the Covenant and the ILO standards?"

2. Mr. REYN (Belgium) said, with regard to issue No. 12, that Belgium had ratified the ILO Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151). It had not ratified the Workers' Representatives Convention, 1971 (No. 135) or the Rural Workers' Organisations Convention, 1975 (No. 141).

3. With regard to issue No. 13, Belgium complied with ILO Convention No. 87, the only exception in its domestic law being the Act of 19 August 1948 on public service duties in peacetime, which provided that, at least in the private sector, the Government could impose restrictions to guarantee essential services. Those restrictions did not apply to civil servants, however, because the Council of State had in the late 1980s decreed that Convention No. 87 applied only to the private sector.

4. Many collective labour agreements contained clauses stipulating that the contracting parties had an obligation to guarantee social tranquillity. Thus, workers had a right to strike, for instance, only after all avenues of bargaining between employers and employees had been exhausted and only after advance notice of a strike.

5. Mr. TEXIER said that in its 292nd report (GB/259/7/14), the ILO Committee on Freedom of Association had in Observation No. 94 said that Belgium needed to adopt legislation setting specific rules governing access of employer/employee organizations to the National Labour Council. That seemed never to have been done, despite repeated ILO urging. He assumed that at issue were the criteria for determining whether a trade union was representative, since the ILO Committee referred to a complaint by the National Management Confederation that it had not been able to establish itself as a representative body. He asked whether such legislation was being considered.

6. Mr. RATTRAY said that it was not clear to him from paragraph 49 of the report of Belgium (E/1990/5/Add.15) whether there was actually a legal right to strike in Belgium.

7. Mr. CEAUSU observed that the report indicated (paras. 56 and 57) that civil servants who went on strike without prior authorization were punishable by law, but that in practice such strikes were generally condoned by the public and the Government preferred not to enforce the provisions in question. He wondered, in the circumstances, why that restrictive legislation was retained at all. Also, its existence seemed to contradict the delegation's earlier statement that the right to strike was not the subject of any regulation.

8. Mr. DENEVE (Belgium), replying to the question concerning the right to strike said that although the right existed in practice, it was not enshrined in any legislative instrument. However, the right to strike was implicit in so far as other aspects of strikes were covered by social legislation including the right of workers on strike to unemployment benefit, and procedures for calculating the number of days on strike with respect to annual leave. Furthermore, the right to industrial action and the conditions in which workers could withdraw their labour were provided for in many sectoral collective agreements duly negotiated and signed between workers, or their representatives and employers. Conditions included prior notice of when a strike would be held and negotiation on the subject of the dispute between workers and employers. There was an unwritten agreement that the social partners would work out industrial disputes between themselves without the need for specific legislation.

9. With regard to the question on strikes by public servants, in recent years disciplinary punishments had not been applied. Article 44 of the Royal Decree of 1991 stated that a withdrawal of labour by public servants did not entail any reduction in the remuneration accorded to them. The Council of State in its ruling on the application of article 44 stated that it implicitly guaranteed public servants' right to strike.

10. Mr. VANDAMME (Belgium) said, in reply to Mr. Texier's question on the representivity of trade unions, that amendments to legislative regulations and a redefining of representivity were being considered. However, there was a certain reluctance to upset the traditional broad consensus enjoyed in Belgium between trade unions and the authorities. At present, representivity was based on certain criteria: representation at the national and inter-occupational level and a minimum of 50,000 trade union members.

11. The CHAIRPERSON invited the delegation of Belgium to reply to the issues raised in connection with the right to social security under article 9 of the Covenant, reading:

> **"14. Please describe the country's system of social security and the legislation in force in this field, in particular concerning the unemployed and migrant workers.**
>
> **15. What proportion of GNP is spent on social security? What developments have taken place in this field in recent years?"**

12. Mr. DENEVE (Belgium) said that the social security system in general applied to all employers and salaried employees covered by a contract of employment, and other individuals providing labour on the basis of similar conditions. There was no discrimination with regard to the application of social security in terms of age, sex, nationality or hours of work. Social security was applied in accordance with the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102).

13. Belgium's unemployment benefit system was similar to that in force in other countries of the European Union, with a broad scope of application extending to all salaried workers providing they had paid their contributions for a specified time and including school-leavers who, after six months without work, were fully entitled to benefit. Certain conditions had to be met. A person had to be without work and remuneration for reasons beyond his or her control; had to be registered as unemployed; had to be available for work and willing to accept any employment offered corresponding to his or her skills and qualifications; and had to be physically or mentally fit for work. Twice a month, the unemployed person was obliged to sign on at an unemployment office. The age limit for benefit was 65 years for men and 60 for women, with the minimum age for entitlement based on when a person left compulsory education. Furthermore, the unemployed person had to reside in Belgium.

14. The levels of benefit varied according to personal circumstances. The head of a family received 60 per cent of his or her last net salary; unemployed people living alone were entitled to 60 per cent of their previous net salary for the first year and 42 per cent from then on; unemployed people living with another person with an independent income received 55 per cent of the previous net salary for one year and then 45 per cent for a further six months which could be extended. There were no time-limits on unemployment benefit although benefits paid to the long-term unemployed, namely those who had been unemployed for between seven and eight years could be suspended if they could not prove that they had tried to find employment and if the income of the household was above a certain level.

15. Belgium was bound by many bilateral and multilateral agreements on the rights of migrant workers to social security benefits. Belgium had ratified the ILO's Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

16. There was no discrimination in Belgium's domestic provisions on social security between Belgium nationals and foreign workers.

17. In Belgium, the proportion of the GNP spent on social security had risen from 24 per cent in 1988 to 24.2 per cent in 1992 which in absolute terms meant a rise from BF 1,323 billion to BF 1,700 billion.

18. Mr. TEXIER said that there were two positive aspects reflected in the report: paragraph 68 on maternity benefits implied that measures had been taken to prevent such benefits acting as an obstacle to the employment of women; and paragraph 81 stated that a minimum income for elderly persons was guaranteed "without any obligation on the part of the beneficiary to contribute".

19. However, on the negative side, there was an apparent trend in Belgium towards the gradual reduction of social security benefits in certain areas. Information from the Belgian branch of the International Federation of Human Rights stated that there was a gradual move towards a non-payment of benefits to people with a less than 10 per cent permanent invalidity. He asked if such a trend had been observed in that area in particular but more generally in areas such as medical prescriptions whereby the costs of less essential drugs were not being fully reimbursed.

20. He also requested clarification of paragraph 74 of the report of Belgium which stated that recognized stateless persons and refugees were treated as Belgians with regard to entitlement to pensions. However, "the pension is not paid to foreigners unless they actually reside in Belgium". Did that therefore mean that a foreign worker, who for reasons of economy, returned to his or her homeland to retire would receive none of the benefits of the contributions made during his or her working life in Belgium?

21. Mrs. JIMENEZ BUTRAGUEÑO said that she was concerned that Belgium might be trying to economize in terms of reducing its contribution towards the cost of pharmaceutical products which, in the long term could have serious implications for preventive treatment, especially for elderly persons.

22. Paragraph 74 of the report (E/1990/5/Add.15) did not make it clear whether the retirement age was the same for men and women. If there was a difference in age, that would amount to discrimination. She asked whether the retirement age was compulsory, especially with respect to the private sector, whether Belgium provided for pre-retirement courses, if pensioners could carry out any productive or paid activity without losing entitlement to their pension, and why pensions were based on a 40-year working life for women and 45 for men.

23. Mr. SIMMA said that the written replies to the Committee's questions contained in document E/C.12/1994/WP.1 stated that some categories of workers, with a contract of employment, could be excluded from the social security system or would be covered only by certain branches. He therefore asked for details on the categories in question.

24. The report from the Belgian branch of the International Federation of Human Rights stated that the Act of 7 August 1974 made "minimex" conditional on the individual being Belgian, an EEC national or a recognized stateless person or refugee. He therefore asked what problems arose in terms of the limitations and conditions in force.

25. Paragraph 82 of the report (E/1990/5/Add.15) said that "in order to obtain the guaranteed income, a male applicant must be at least 65 years of age and a female applicant 60". The information provided by the Belgian branch of the International Federation of Human Rights said that such differentiation clearly contradicted the Constitution of Belgium which stipulated that all Belgians were equal before the law and that there should be no discrimination with regard to Belgian's enjoyment of recognized rights and freedoms. He asked if the Government of Belgium had taken measures to rectify the anomaly and if there had been any legal problems in so doing.

26. The CHAIRPERSON said that although the delegation of Belgium asserted that there was no discrimination against foreign workers in Belgium, paragraph 111 of the report (E/1990/5/Add.15) stated that there were different rights covering non-EEC workers, which in itself seemed to violate the spirit of the Covenant and be none other than discrimination.

27. Mr. DENEVE (Belgium) said that Belgium allocated a high proportion of its GNP to social security and that in recent years governments had tried to extend social security benefits but, due to financial imperatives had been forced to make distinctions between the different categories. Therefore, in the 1980s, two contradictory trends had come to the surface.

28. Three categories of beneficiary had been created, rather than two, in respect of entitlement to unemployment benefit and disability allowances: heads of household, workers living on their own and workers living with another worker. It had been decided that as the financial burden on those in the first category was highest their benefit entitlement could remain unchanged, but that for the latter two categories had been reduced. Greater controls had also been put in place to eliminate illegal working by the unemployed or those on disability benefit. At the same time there had been reductions in public health charges, including doctors' fees and hospital services. It was a trend that had developed over the 1980s and would continue, in the interests of greater justice and equity. Those in the greatest need - people entitled to "minimex" and anyone over the age of 65, whether male or female, without adequate means of subsistence - would see their benefit entitlement not reduced, but increased.

29. Since 1990 the retirement age had been the same for men and women. More precisely, a man or woman could choose to retire at any age between 60 and 65, while in the private sector there was no obligation to retire even at 65. The basis on which pensions were calculated, however, remained different for men and women: men qualified for a full pension only after 45 years' work, women after 40. Those provisions would be changed in due course because the European Court of Justice had ruled against their legality. The same applied to other benefits: Belgium would therefore revise its legislation, beginning with the basis for pension calculations and moving on to unemployment and disability benefits. He added that a pre-pension scheme was in force, whereby a worker dismissed before the age of 50 was entitled both to unemployment benefit from the State and financial assistance from his former employer. A very recent measure, which would have to be developed further, enabled a person to work part time and draw part of his pension. As for preparatory training for retirement, he said that no specific rules existed in such schemes, although they were operated in many parts of the country. He added, in response to Mrs. Jimenez Butragueño's question, that pensioners were entitled to undertake work, but only to a limited extent: the maximum permitted earnings, in most cases, were $7,000 a year.

30. With regard to Mr. Simma's question concerning those categories of workers who could be excluded from the social security system, he said that some salaried workers who worked only a limited period in the course of a week, such as domestic servants, casual labourers or gardeners, were not fully covered because their employers were not obliged to pay full social security contributions for them. As for "minimex" and income schemes for the elderly,

he acknowledged that entitlement was restricted to Belgian nationals, stateless persons, recognized refugees and those with over five years' residence in Belgium.

31. Mr. REYN (Belgium) said, in relation to the suggestion that paragraph 111 of the report was discriminatory to non-EEC workers, that it should be read in conjunction with paragraph 109, which showed that no such discrimination existed. The only difficulty arose over the payment of benefit abroad: those entitled to Belgian pensions could have them paid in their country of residence anywhere within the EEC and the countries listed in paragraph 112. In other cases, the pension was paid into a Belgian bank account and could then be transferred abroad. As far as the right to work was concerned he said there was no discrimination against non-nationals, with the exception of certain limitations imposed by the law, which were by no means arbitrary. For example, some jobs in the civil service were restricted to nationals, as was the case in other countries.

32. Mr. DENEVE (Belgium) added, in correction of an earlier statement, that the stipulation that a recipient of social security should have lived in Belgium for five years had been set aside in 1992. The requirement since then was that the recipient had to have lived in Belgium "permanently". Such a person was permitted to spend 90 days a year abroad, or even more if there were special circumstances and authorization was given.

33. The CHAIRPERSON invited the Belgian delegation to respond to the issues relating to protection of the family, mothers and children under article 10, which read as follows:

> "16. Please explain the concept of 'family' in Belgian law. Is there any legislation encouraging people to marry, giving married couples incentives to have many children, etc.?
>
> 17. Please describe the system of paid maternity leave and any benefits for pregnant women. Are they guaranteed the right to return to their former employment after maternity leave?
>
> 18. Please give information on legislation concerning protection of the rights of children and young people and on problems encountered by the Government in connection with mother and child protection."

34. Mr. VANDAMME (Belgium) regretted that the sections of the Belgian report dealing with article 10 perhaps summarized the position too briefly. It was a very large subject and it would have been preferable if the questions posed had been more specific. Belgian legislation was based on the traditional family in the framework of marriage. Although there was no discrimination against children born out of wedlock, marriage was encouraged. As for incentives to have many children, he said that while family benefit took into account the financial burden that children represented it was not geared for encouraging population growth per se.

35. Regarding the right of a woman to return to her job after childbirth, he said that legally speaking pregnancy entailed the suspension of a contract of work, but dismissal for that reason was prohibited, nor could a woman be

dismissed during her maternity leave. In practice, therefore, the woman's job was protected. As for issue No. 18, he said that important changes had recently been made to Belgian legislation, whereby work by children under the age of 15 was prohibited except in very limited circumstances, such as participation in some form of artistic activity; and in such cases individual authorization had to be obtained. He added that when Belgium had held the presidency of the European Union in the second half of 1993 it had worked hard to extend that provision to the whole of the Union. Still on issue No. 18, he was at a loss to know what "problems" were referred to and invited more specific questions on the matter. He added that increasing amounts of attention were paid to the needs of one-parent families and the children of broken marriages.

36. Mr. TEXIER said that he assumed, on the basis of paragraph 119 of the report, that there was total equality between children born in and out of wedlock. He asked, however, whether a child born out of wedlock took his father's or his mother's name. He also wondered whether courts often awarded divorced parents joint authority over a child, including the joint responsibility for the child's education. Lastly, noting that in his own country legislation on marriage between a national and a foreigner was unfortunately becoming more rigorous, and indeed was moving towards a presumption of fraud in such cases, he asked whether the same was true in Belgium, as the Belgian branch of the International Federation of Human Rights seemed to suggest. Was it correct that a person married to a Belgian national without valid administrative documents could be expelled? He would also like to know what were the conditions for acquiring Belgian nationality by marriage, bearing in mind that originally it had been acquired automatically. Subsequently there had been a stipulation that the couple should stay together for a year and he wondered if there had been any further developments. He understood that Governments were anxious to prevent economic immigration, but such tightening of the relevant legislation was regrettable.

37. Mrs. JIMENEZ BUTRAGUEÑO asked what procedure regarding the payment of pensions was followed in cases where a person was divorced and remarried. Was the pension divided between the relict and the divorced spouse or spouses or did it go in its entirety to the widow or widower? She added that although older women sometimes married younger men problems more often arose following a man's divorce and subsequent remarriage.

38. Mr. DENEVE (Belgium), responding to the points raised by Mr. Texier, said that following a ruling by the International Court of Justice in 1980 that Belgium discriminated between children born in and out of wedlock with regard to their rights of inheritance the Belgian courts insisted on strict equality. As for joint parental authority, he said that rulings to that effect were not common, but they were possible with certain limitations: naturally, the parent living with the child had a greater responsibility. As for the question regarding the payment of pensions, he said that payments were based on the number of years a couple had lived together.

39. Mrs. Vysokajova took the Chair.

40. Mr. VAN CRAEN (Belgium) said that restrictions affecting the marriage of Belgian nationals to foreigners were not as great as in France. He would obtain further information and convey it to the Committee later.

41. The CHAIRPERSON drew attention to the issues to be taken up in connection with the right to an adequate standard of living under article 11, and which were as follows:

> "19. Please describe the system adopted in Belgium for determining the standard of living of the population and in this connection give information on the most vulnerable groups - the unemployed, pensioners, migrant workers, etc.
>
> 20. Please give detailed information on the existing laws concerning the realization of the right to housing. Are there any homeless people in Belgium and, if so, how is this problem dealt with? Is there any legislation to protect people from forcible eviction from their homes at the arbitrary demand of the landlord? Has Belgium a 'squatter' problem and, if so, how is it dealt with?"

42. Mr. VANDAMME (Belgium), replying to issue No. 19, said that there was no single system in Belgium for determining the standard of living of the population. Various income guarantee systems existed, including the unemployment benefit, pensions, and collective agreements on minimum wages in the various occupational sectors. The final safety net was the public welfare centre, which provided financial, housing, psycho-social and legal assistance that was indexed.

43. Replying to issue No. 20, he said that there was no regulatory legislation in Belgium on the right to housing but that the right had been included among the new social rights in the revised Constitution. It was indirectly covered by the public welfare system for persons in difficulties and by regional and administrative measures adopted to help low-income families to obtain housing.

44. The tenant's right to a lease had recently been amended by an act of 1991 introducing provisions imposing on landlords minimum standards of security, sanitation and fitness for habitation. The lease had to be for a given period but could be terminated on certain conditions favourable to the tenant. The law gave a tenant who could prove special circumstances the right to an extension of lease, governed rent rises and protected the tenant when the property changed hands.

45. Families without resources who found themselves homeless were looked after by the public welfare centres. Belgium was advocating inclusion of the rights of evicted tenants in the European Social Charter that was being discussed by the Council of Europe. The Government was also in favour of prior notice being given to the social welfare centres; that was not always done since the law was still biased in favour of the landlord.

46. Homeless people were often dropouts, alcoholics and ex-prisoners, and the media had drawn attention to their plight, aggravated by the long winter in Belgium. Local authorities and private charities were providing short-term

reception centres, often in conjunction with the public welfare centres which were obliged to provide assistance under the act of 1976. In addition there were regional government schemes under which homeless persons were given grants of various kinds.

47. The squatter problem was not as extensive in Belgium as elsewhere and squatters were tolerated if they did not stay too long. Because of speculation, many blocks of flats were in a very poor condition and local authorities, in collaboration with low-cost housing corporations and public welfare centres, were trying to rehabilitate them. The problem, however, was one of funding.

48. Mr. SIMMA asked for clarification of the sentence reading: "Thus the right to welfare is binding" at the end of paragraph 149 of the report (E/1990/5/Add.15). Did that mean that the right was enforceable?

49. He referred to paragraph 166 of the report which stated that: "There is a great shortage of housing that matches the size of families and the specific needs of foreigners." Was Belgium, like Germany, giving any incentives to the private sector to invest in low-cost housing?

50. Paragraph 167 of the report stated that "it would appear that low-cost public rental housing is not solely occupied by persons from the lowest income categories". That mirrored an acute problem in Germany, where consideration was being given to the provision of incentives to encourage persons with a higher income to move. Was Belgium taking similar action?

51. According to information from the Syndicat des Locataires, a non-governmental organization, there were currently over 150,000 empty dwellings in Belgium, probably as a result of speculation but also because owners regarded the protection of tenants as prohibitive and preferred to keep their flats vacant to renting them. Were any remedies being considered in that regard?

52. On the issue of rent control, he had understood that the landlord's right to raise the rent during a term of the lease was limited but wished to know whether on expiry of a lease or if a tenant moved the landlord had total freedom to raise the rent.

53. The Belgian representative had said that the question of forced evictions was one where the law was biased in favour of the landlord. He asked whether there were no special conditions preventing eviction in winter, in the event of the tenant's hospitalization or financial difficulties or when the mother of the family was pregnant.

54. He also wished to know whether any attempt had been made to count the number of homeless people.

55. Mr. Alvarez Vita resumed the Chair.

56. Mr. TEXIER asked how Belgium intended to put into effect the right to housing newly enshrined in its Constitution. Paragraphs 171 and 180 of the report gave statistics on the number of dwellings that needed rehabilitation

in the Brussels and Walloon Regions. Was there a shortfall in low-cost housing or would rehabilitation solve the problem? He had seen a statement by a Belgian tenants' association calling for a joint committee of lessors and tenants to deal with all the complex problems of housing, and requested the views of the delegation on that proposal.

57. He understood the possible inclusion of the rights of evicted tenants in the European Social Charter, would mean "no eviction without rehousing". That posed an extremely difficult problem for the State would have to intervene in landlord-tenant relations when the reason for the eviction was the owner's need to house a family member or to rehabilitate the property.

58. Inclusion of the right to housing in the Constitution implied the need for a long-term housing plan. According to information he had received, the right to requisition introduced in January 1993 had had virtually no effect and some burgomasters had said that they would not exercise it. Since requisitioning property could help prevent deaths on the streets, he wished to know what the situation was with regard to the right of requisition and whether any alternative had been sought.

59. Mrs. JIMENEZ BUTRAGUEÑO referred to paragraph 167 of the report which read: "Various studies have also revealed that the poorest families do not in general rent low-cost public housing." She wondered how that could be, since income should be taken into account in allotting housing, and whether insufficient publicity had been given to the existence of such housing.

60. Mr. RATTRAY observed that although, as recognized in the Committee's General Comment No. 3, the rights in the Covenant might have to be achieved progressively, States parties undertook to implement them to the maximum of their available resources, in accordance with article 2 (1) of the Covenant. The use of progressive measures thus had to be justified. In that context, he wondered whether the right to housing had assumed a lower order in Belgium's priorities and whether there had indeed been a deterioration in the housing situation, as seemed to be implied in paragraphs 166 and 173 of the report.

61. Mr. VANDAMME (Belgium), replying to questions, said that there was an extraordinary respect for the right of property ownership in Belgium, which had one of the highest rates of owner-occupation in the world. The members of the Committee had pointed to some fundamental structural issues in the housing sector which were caused by the financial problems of property owners and of local authorities.

62. Property owners did not always maintain their homes and when property changed hands it was not necessarily improved. Local authorities had relatively few direct means of action in the housing sector. There were intercommunal housing corporations to finance housing with local authority assistance. Individuals received government encouragement to buy housing at reasonable rates of interest, and housing corporations bought homes for rent with an option for the tenant to buy after a period. However, speculation had resulted in rent rises; moreover, the intercommunal housing corporations that built housing - not always low-cost housing - had to make a minimum profit for their investors, particularly banks, which tended to set income levels too

high for people to be able to buy. The authorities did not have much control in that regard, which explained the statement in paragraph 167. Moreover many housing corporations were controlled by local politicians and were not necessarily democratic.

63. As to incentives to leave insanitary housing, requisition by the local authority was possible. Local authorities and public welfare centres tried to ensure that insanitary housing was not occupied for any length of time. Low-income families did have the right to housing benefit but much depended on the enterprise of the people in charge of the housing corporations.

The meeting rose at 6 p.m.